Remarks/Arguments:

A. Status of the Claims

Claims 4 and 13-17 have been amended to correct minor grammatical errors. These amendments do not in any way affect the scope of the claims or range of equivalents to which the elements in the claims are entitled. No new matter has been added. Claims 1-37 are currently pending.

B. Applicants Election

1. Election of Invention 9

In response to the Restriction Requirement as to Inventions 1-17, Applicants elect Invention 9 drawn to claims 12, 13, 18, 23, and 27. The Examiner indicates that claim 12 links Inventions 1-7 and 9-13, respectively. Therefore, upon allowance of linking claim 12, the restriction requirement as to the linked inventions must be withdrawn and any claims depending from or otherwise including all the limitation of the allowable linking claim(s) will be entitled to examination in the instant application.

2. Election of a Peptide

In response to the Restriction Requirement as to the election of a peptide, Applicants elect residues 320-350, which is SEQ ID NO. 2 (see claims 23 and 27), with traverse.[1]

Applicants traverse as the Restriction Requirement divides the claims into several different sequences, thereby placing an inordinate economic burden on Applicants to obtain a

[1] Applicants' arguments against the Restriction Requirement are based on: (1) policy set forth by the U.S. Patent Office; (2) the lack of an additional burden—much less a "serious burden"—to search all of the claimed sequences; and (3) the improperness of requiring a restriction for the claimed Markush Groups (see, e.g., claim 13). Such arguments do not create an estoppel against Applicants and are not an admission that the restricted Groups are either patentably distinct or patentably indistinct from one another. This applies to all of Applicants' arguments against the Restrictions.

reasonable scope of patent protection for the invention. The U.S. Patent Office has recognized this burden and has implemented the following policy with respect to Restriction Requirement practice:

> ...Nevertheless, to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Director has decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of such nucleotide sequences to be claimed in a single application...It has been determined that normally ten sequences constitutes a reasonable number for examination purposes. Accordingly, in most cases, **up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction**....

MPEP § 803.04 (emphasis added). It follows that this policy also applies to amino acid or peptide sequences such as those claimed by Applicants. Therefore, Applicants are entitled to have at least 10 additional sequences searched.

Applicants also take the position that the sequences in claim 13 should be searched because such a search does not present a "serious burden" on the examiner. MPEP § 803 ("If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions"). There is no "serious burden" for several reasons. By way of example only, peptides derived from a VEGFR region containing residues 320-350, 350-400, 400-440, 481-565, 640-685, and 745-770 are derived from the VEGFR sequence. Therefore, a search using the VEGFR sequence should encompass VEGFR regions containing residues 320-350, 350-400, 400-440, 481-565, 640-685, and 745-770. Also, the claimed residues share structural similarities (see, e.g., claims 12 and 13). Further, the claimed residues share similar functionalities (*e.g.*, non-competitive extracellular cytokine receptor antagonist). Because of these functionally and structurally similar features, and in view of the Patent Office's new policies, there is no "serious burden" to search all of the claimed sequences.

Applicants further note that the recited claims and sequence listings (see claim 13) are properly in Markush group format. MPEP § 803.02 explains that if the members of a Markush group are sufficiently few in number (six in Applicants' claim 13) or so closely related that a search and examination of the entire claim can be made without serious burden (the residues share structural and functional characteristics—see above), the examiner must examine all the members of the Markush group in the claim on the merits, even when they are directed to independent and distinct inventions. In addition, this section explains that, since the decisions in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas*, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. Unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature essential to that utility. *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). As noted above, and in non-limiting aspects, the sequences share a common utility and substantial structural features essential to that utility. Therefore, residues 320-350, 350-400, 400-440, 481-565, 640-685, and 745-770 should be examined together.

Applicants also reserve all rights in the non-elected inventions, including the right to file one or more divisional applications covering the subject matter thereof.

C. Conclusion

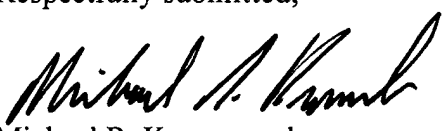
Applicants believe that this is a full and complete response to the Restriction Requirement dated October 17, 2005. Applicants request that the Restriction Requirement to residues 320-350, 350-400, 400-440, 481-565, 640-685, and 745-770 be withdrawn and that all residues be examined for the their full scope.

Petition for a Five-Month Extension of Time:

Pursuant to 37 C.F.R. § 1.136(a), Applicants petition for a five-month extension of time to and including April 17, 2006, in which to respond to the Restriction Requirement dated October 17, 2005. Pursuant to 37 C.F.R. § 1.17, a check in the amount of $1,080.00 is enclosed, which is the process fee for a five-month extension of time for a small entity status. If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit said fees from or to Fulbright & Jaworski Deposit Account No. 50-1212/GOUD:040US.

Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants' representative at (512) 536-3020.

Respectfully submitted,



Michael R. Krawzsenek
Reg. No. 51,898
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 536-3035
(512) 536-4598 (facsimile)

Date: April 17, 2006